

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRYL G. CLEWIES, II,

Plaintiff,

v.

DEPARTMENT OF CHILD SUPPORT  
SERVICES, et al.,

Defendants.

No. 2:24-cv-01733-DAD-SCR

ORDER

Plaintiff is proceeding pro se in this matter, which is referred to the undersigned pursuant to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff filed a motion for leave to proceed in forma pauperis (“IFP”) and a declaration, including a statement of income and expenses, averring he is unable to pay the costs of these proceedings. *See* 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted. However, for the reasons provided below, the Court finds Plaintiff’s complaint is legally deficient and will grant Plaintiff leave to file an amended complaint.

I. SCREENING

A. Legal Standard

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In  
2 reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil  
3 Procedure. The Federal Rules of Civil Procedure are available online at [www.uscourts.gov/rules-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)  
4 [policies/current-rules-practice-procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure).

5 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and  
6 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this  
7 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled  
8 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief  
9 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.  
10 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in  
11 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),  
12 Sacramento, CA 95814, or online at [www.uscourts.gov/forms/pro-se-forms](http://www.uscourts.gov/forms/pro-se-forms).

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
14 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
15 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
16 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
17 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. *See Neitzke*, 490 U.S. at 327; *Von*  
18 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), *cert.*  
19 *denied*, 564 U.S. 1037 (2011).

20 The court applies the same rules of construction in determining whether the complaint  
21 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court  
22 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must  
23 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
24 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the  
25 court need not accept as true legal conclusions, even if cast as factual allegations. *See Moss v.*  
26 *U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of  
27 a cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
28 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to  
2 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has  
3 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
4 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at  
5 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity  
6 to amend, unless the complaint’s deficiencies could not be cured by amendment. *See Akhtar v.*  
7 *Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

8 B. The Complaint

9 Plaintiff’s complaint is 5 pages, but he has attached over 100 pages of attachments. ECF  
10 No. 1. Plaintiff states the action is one for damages and injunctive relief under the Fair Debt  
11 Collection Practices Act (“FDCA”), 15 U.S.C. § 1692 et seq. The intended Defendants are  
12 unclear. The caption of the Complaint lists the Department of Child Support Services (“DCSS”)  
13 and twelve individuals, who appear to be employees of DCSS, or attorneys for DCSS. However,  
14 in the portion of the complaint labeled “Parties,” Plaintiff refers only to “Defendant” singular, and  
15 the only Defendant described is DCSS. ECF No. 1 at ¶¶ 7-16. Other portions of the Complaint  
16 occasionally refer to “defendants”, but Plaintiff makes no specific allegations against any of the  
17 twelve individuals listed in the caption.

18 Plaintiff alleges that in November 2023, he “allegedly incurred a financial obligation”  
19 owed to DCSS. *Id.* at ¶ 17. Plaintiff alleges he disputed the account, asked for validation of the  
20 alleged debt, and sent letters to Defendants. *Id.* at ¶¶ 19-21. Plaintiff then alleges additional  
21 telephone and mail communications with Defendants. Plaintiff claims Defendants never  
22 responded to the request for validation of debt. *Id.* at ¶ 28. The sole count of the complaint is  
23 entitled “FDCPA Violation” and states that it incorporates the rest of the complaint. *Id.* at ¶¶ 44-  
24 46.

25 Plaintiff requests statutory damages under 15 U.S.C. § 1692k(a), and an award of  
26 attorney’s fees. ECF No. 1 at 4.

27 C. Analysis

28 Plaintiff’s complaint contains a jurisdictional statement and request for relief. However, it

1 fails to contain a “short and plain statement of the claim showing that the pleader is entitled to  
2 relief.” Fed. R. Civ. P. 8(a)(2). Plaintiff’s allegations are largely conclusory. Plaintiff names  
3 twelve defendants in the caption, but then refers most often to “Defendant” singular, or  
4 collectively “defendants.” Plaintiff refers to telephone and mail communications in regard to a  
5 debt, but does not describe them in any detail, such as who initiated the communication, when, or  
6 the nature of the communication.

7 To establish a violation of the FDCPA, a plaintiff must show: 1) he was a consumer; 2)  
8 who was the object of a collection activity arising from a consumer “debt” within the meaning of  
9 the FDCPA; 3) the defendant is a “debt collector” as defined by the FDCPA; and 4) defendant  
10 engaged in an act or omission prohibited by the FDCPA. *Wilson v. Experian*, 2025 WL 1663287,  
11 \*4 (E.D. Cal. June 12, 2025). “Because not all obligations to pay are considered debts under the  
12 FDCPA, a threshold issue in a suit brought under the Act is whether or not the dispute involves a  
13 ‘debt’ within the meaning of the statute.” *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir.  
14 2004). The FDCPA defines debt as “any obligation or alleged obligation of a consumer to pay  
15 money arising out of a transaction in which the money, property, insurance, or services which are  
16 the subject of the transaction are primarily for personal, family, or household purposes ...” *Id.* at  
17 1227, citing 15 U.S.C. § 1692k.!

18 Plaintiff alleges he incurred a financial obligation which was “an account due and  
19 allegedly owing” to the DCSS. ECF No. 1 at ¶ 17. The FDCPA’s “reach is limited to debt  
20 obligations arising from negotiations or contracts for consumer-related goods or services.”  
21 *Chavez v. Access Capital Servs., Inc.*, 2014 WL 2716876, \*2 (E.D. Cal. June 16, 2014).  
22 “[C]ourts have held that an obligation to pay child support does not constitute a ‘debt’ under the  
23 FDCPA.” *Silver v. Dystrup-Chiang*, 2022 WL 741903, \*2 (W.D. Wa. March 11, 2022)  
24 (collecting cases). Plaintiff alleges that he has incurred a vaguely described financial obligation  
25 to the Department of Child Support Services, this is presumably a child support obligation which  
26 does not constitute “debt” under the FDCPA.

27 Additionally, Plaintiff’s allegations that the FDCPA was violated are largely conclusory.  
28 For example, Plaintiff makes the conclusory assertion that, “defendants never responded to

1 Validation of debt.” ECF No. 1 at ¶ 27. Such assertion is insufficient. *See Wilson*, 2025 WL  
2 1663287 at \*5 (“Plaintiff’s conclusory allegations that ‘defendant’ did not validate the debt are  
3 not enough to state a claim.”).

4 Finally, as to Plaintiff’s relief requested, he requests an award of attorney’s fees pursuant  
5 to 15 U.S.C. § 1692k(a)(3). Attorney fees are recoverable under the FDCPA, however Plaintiff is  
6 proceeding pro se. “[A] pro se litigant cannot be compensated under a federal statute for  
7 attorney’s fees.” *Meier v. Grant & Weber, Inc.*, 2019 WL 2373517, \*4 (S.D. Cal. June 4, 2019)  
8 citing *Kay v. Ehrler*, 499 U.S. 432, 435-38 (1991); *see also White v. Experian*, 2024 WL  
9 3973039, \*1 (C.D. Cal. June 17, 2024) (“It is well established that non-attorney pro se litigants  
10 cannot recover attorney’s fees for the time they’ve spent litigating their cases.”).

11 The in forma pauperis statute, 28 U.S.C. § 1915(e) provides that this Court “shall dismiss  
12 the case at any time” if it determines that the action fails to state a claim on which relief may be  
13 granted. The Court finds that Plaintiff fails to state a claim because his allegations are conclusory  
14 and because child support does not constitute “debt” under the FDCPA. However, Plaintiff is  
15 proceeding pro se and a pro se litigant should be given leave to amend unless it is absolutely clear  
16 that the deficiencies cannot be cured by amendment. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th  
17 Cir. 2012). As Plaintiff’s allegations are vague, the Court cannot conclude that leave to amend  
18 would be futile. Rather than recommending dismissal of the action, the undersigned will provide  
19 Plaintiff an opportunity to amend the complaint to allege sufficient factual content to state a claim  
20 for relief that is plausible on its face.

## 21 II. AMENDING THE COMPLAINT

22 If plaintiff chooses to amend the complaint, it must contain a short and plain statement of  
23 Plaintiff’s claims. The allegations of the complaint must be set forth in sequentially numbered  
24 paragraphs, with each paragraph number being one greater than the one before, each paragraph  
25 having its own number, and no paragraph number being repeated anywhere in the complaint.  
26 Each paragraph should be limited “to a single set of circumstances” where possible. Rule 10(b).  
27 As noted above, forms are available to help plaintiffs organize their complaint in the proper way.  
28 They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA

95814, or online at [www.uscourts.gov/forms/pro-se-forms](http://www.uscourts.gov/forms/pro-se-forms).

The amended complaint must not force the Court and the defendants to guess at what is being alleged against whom. *See McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996) (affirming dismissal of a complaint where the district court was “literally guessing as to what facts support the legal claims being asserted against certain defendants”). The amended complaint should contain specific allegations as to the actions of each named defendant rather than making conclusory allegations against the defendants collectively. The amended complaint should also describe the nature of the “debt” allegedly owed to DCSS.

Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s amended complaint complete. An amended complaint must be complete in itself without reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended complaint supersedes the original complaint. *See Pacific Bell Tel. Co. v. Linkline Communications, Inc.*, 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint supersedes the original complaint”) (citing 6 C. Wright & A. Miller, *Federal Practice & Procedure* § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

Plaintiff’s amended complaint must address the issues set forth herein. It must plead the necessary elements of a claim under the FDCPA as set forth herein. Plaintiff must also allege enough facts in support of his claims to state a claim to relief that is plausible on its face.!

### III. CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is GRANTED.
2. Plaintiff **shall have 30 days from the date of this order** to file an amended complaint that addresses the defects set forth above. If Plaintiff fails to timely comply with this order, the undersigned may recommend that this action be dismissed.

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1 3. Alternatively, if Plaintiff no longer wishes to pursue this action, Plaintiff may file a notice  
2 of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil  
3 Procedure.

4 SO ORDERED.

5 DATED: July 14, 2025

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9 SEAN C. RIORDAN  
10 UNITED STATES MAGISTRATE JUDGE  
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